

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 665 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? Yes. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.
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SHIVSHINH J GOHEL

Versus

STATE OF GUJARAT

Appearance:

MR PH PATHAK for Petitioner

MS SIDDHI TALATI, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 22/08/2000

ORAL JUDGEMENT

1. By means of this petition, the petitioner has sought for issuance of writ of certiorari for declaring the order of compulsory retirement dated 17-11-1987 as illegal, invalid and inoperative in law and to hold the action of respondents compelling the petitioner to proceed on leave and not giving any posting order as

illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India and also for a direction to the respondents to pay the salaries of the said period.

2. The petitioner was working as Forester in the Limkheda range. The petitioner was transferred by the order dated 30-6-1987 of the District Forest Officer from Limkheda Range to Baria Range under D.P.A.P. Scheme. Under the said order the petitioner was relieved from Limkheda with effect from 30-6-1987. After seven days of joining period the petitioner reported to Baria Range Office by reporting letters dated 30-6-1987 and 8-7-1987 but Baria Range Officer and the Dy. Forest Officer has refused to issue any posting orders to the petitioner, as the Forester concern Mr. Parghi who was reverted and on his place the petitioner has to resume duties, has obtained the stay order from the Court against his reversion and it was not possible for the department to allow two persons to work on one and the same post. When the petitioner requested to permit him to join his duty at the relevant place the Range Forest Officer and District Forest Officer asked the petitioner to wait for some time as they were going to get the stay order vacated immediately and the petitioner will get his salary and the petitioner was directed to proceed on leave and if he will not proceed on leave then he was warned to face consequences and also to face the departmental proceedings. Hence, the petitioner was compelled to give leave report for 20 days. When the department was not able to get the stay order vacated, the petitioner attended office on 23-7-87, 1-8-87, 13-8-87 and 19-8-89 and even then the officers have not given any posting order and the petitioner was not allowed to join his duty. Under the threat of the departmental proceedings, the petitioner was compelled to submit his leave report. When the department found it difficult to get the stay order vacated, the department asked the petitioner to accept the reversion on the post of Beat Guard. If he is ready to accept the reversion he could be issued posting order on the reverted post of Beat Guard. As soon as the stay order obtained by Mr. Parghi is vacated, the petitioner's case would be considered for promotion. For that, the petitioner was not ready to accept and he did not opt to join on the reverted post of Beat Guard and the petitioner was not allowed to join his duty on the transferred post. Till the month of November, 1987 the petitioner was compelled to give leave report and by the order dated 17-11-1987 the petitioner was retired prematurely as Forester alternatively to accept the reverted post of Beat Guard. The petitioner submitted the detailed representation on

30-11-1987 stating therein that he was not given any posting order and he was compelled to submit leave report and without considering the representation of the petitioner, the respondent no. 1 confirmed the order of compulsory retirement by the order dated 8-12-1987. After receiving the order dated 8-12-1987 the petitioner gave a notice to the respondents on 12-1-1988 but all efforts in vain. It is also asserted that the petitioner initially joined service in 1955 as Beat Guard and he was promoted as Forester in the year 1972 and he was transferred from one place to another. In the year 1977 the petitioner was posted as Forester in Tunki town and he was given the charge of Tunki Range where he found that in one of beat known as Bhey Patia there was illegal cultivation and encroachment on the forest land. The local people have encroached on the forest land. The petitioner made complaint to the immediate Officer Mr. I.P. Solanki, Range Forest Officer. Said Mr. Solanki asked that the petitioner need not to worry about it and not to disturb the people as he has permitted them to cultivate the forest land and Mr. Solanki threatened the petitioner that if he would do anything against those persons or disturb them, then the petitioner will have to face consequences. The petitioner without consulting Mr. Solanki filed the criminal complaints against those persons who were illegally cultivating the forest land. The Criminal Court imposed penalty on those farmers. Mr. Solanki being aggrieved from the behaviour of the petitioner, started to harass the petitioner. When the petitioner made repeated requests, in the month of July, 1978 the petitioner was given adverse remarks that his performance is poor. When the petitioner was harassed by the Range Forest Officer and inaction on the part of the Divisional Forest Officer on his representation the petitioner addressed the letter to the Conservator of Forest on 11-1-1979 regarding adverse remarks made against him in the year 1977. The petitioner made the representation on 14-7-1988. But no action was taken against the Range Forest Officer or the District Forest Officer with regard to the representation of the petitioner dated 11-1-1979 nor any reply was given to the petitioner. There was no adverse remarks against the petitioner in the year 1978-79 and the petitioner was due for crossing the efficiency bar and hence he made representation in the year 1978. But he was informed by the department that due to adverse remarks for the year 1977-78 he was not allowed to cross Efficiency Bar. The petitioner stated that there was no complaint against him in the year 1978-79 and hence he should be allowed to cross Efficiency Bar and due to dispute between the petitioner and the Range Forest Officer, the petitioner

was not allowed to cross Efficiency Bar. The petitioner made representation for releasing the increments and he was served with a letter dated 23-2-1980 whereby the petitioner was informed about the false adverse remarks in respect of the year 1978-79. He made a representation by the letter dated 29-2-1980 regarding harassment made by Mr. Solanki at the relevant time. No adverse remarks were communicated to the petitioner in the next year and he was not allowed to cross Efficiency Bar. In the year 1981, the petitioner was given award of honesty. The petitioner filed various complaints against those persons and recovered fine of Rs. 16,688/- for the offence committed by them and various properties were also taken back. The petitioner was placed under suspension from 31-1-1981 on fictitious grounds and he remained under suspension till 20-10-1982. The Conservator of Forest found from the report of inquiry that it is not reasonable to retain the petitioner under suspension, the suspension was revoked with effect from October, 1982 and he was posted in Jadakheria village in Limkheda range. After a week, the petitioner was shifted from Limkheda range to Garbada Range and posted at Pata Dungari. After about four months, the petitioner was again transferred from Gorbada range to Baria range as Mahuda doli Forester. After about four months, the petitioner was shifted to Limkheda range in D.P.A.P. scheme. Before the petitioner took the charge, the Forester who was on leave resumed his duties. As a result of that, another order issued by the Deputy Forest Officer dated 17-8-1983 transferring the petitioner from Baria Division to the Chhotaudepur Division and posted at Chilarvat and the petitioner was posted to work in the R.F.W. scheme and he was shifted to one place to another within three to four months. In the month of April, 1983, the petitioner was served with a memo informing him about adverse remarks for four months. The petitioner made a representation requesting the Dy. Forest Officer to give specific instances for adverse remarks to enable him to give explanation. But no reply was given to the petitioner as there was no adverse remarks for the year 1980-81. Even then the petitioner was not allowed to cross Efficiency Bar. The petitioner was served with the charge sheet dated 4-10-1982 regarding negligence of the petitioner when he was at Randhikpur with malafide intention. On inquiry, the Inquiry Officer found that there was no prima-facie case against the petitioner and exonerated the petitioner from the charges levelled against him. Even then without giving any opportunity to the petitioner, the disciplinary authority awarded the punishment reducing him to the minimum scale for one year by the order dated 17-3-1983 and the petitioner was

retained in the scale of Rs. 330/-/- and not posted back in original grade after one year and the petitioner has not been paid his dues for two years i.e. 1984-85 and 1985-86.

3. It is stated by the learned counsel for the petitioner that there was no adverse remarks against the petitioner even then he was not allowed to cross Efficiency Bar. It is mentioned that the respondents have no power to pass such orders of compulsory retirement under Rule 161 (i) (i) of the Bombay Civil Service Rules, 1971. The order of compulsory retirement is malafide, arbitrary and against the statutory provisions of law and the same is not sustainable in the eye of law.

4. The Deputy Conservator of Forest has filed an affidavit-in-reply wherein it is stated that the petitioner has completed 55 years of age on 19-2-1988. As per Rule 161 of the Bombay Civil Service Rules, 1971, this case was placed before the Review Committee and the Review Committee after considering and scrutinizing last ten years Confidential Reports of the petitioner, recommended his retirement at the age of 55 years. In this connection, I may point out that the concerned Officers are present in the Court. The learned A.G.P. produced the report of the Review Committee in which it is mentioned that nine years' service of the petitioner has been considered. But what they have considered has not been mentioned. Not only that, the said report is undated and no date is mentioned on the report of the Review Committee. It is also mentioned in the counter affidavit that the notice was given to the petitioner under Rule 161 of the Bombay Civil Service Rules for a period of three months in November, 1987 and by the said notice the petitioner was given an opportunity to opt posting on the reverted post as the respondents are bound to offer reverted post before retiring an employee prematurely but the petitioner did not accept the reverted and therefore he is prematurely retired on 19-2-1988. The respondent Government has not committed any illegality and the impugned order does not suffer from any infirmity but it is just, proper and correct.

5. It is admitted in the affidavit-in-reply that it is true that Mr. Parghi obtained stay order against his reversion from the Civil Judge (SD), Godhara and therefore the petitioner could not take over the charge at the aforesaid place. The petitioner proceeded on leave at his own accord and it was denied that he was compelled to so. It is also mentioned that all the

adverse remarks in respect of years 1978, 1980. 1981, 1982, 1983 as well as 1986 were communicated to the petitioners. But the petitioner has not filed any representation against those remarks and those remarks were not expunged. The incidents of personal quarrel of the petitioner with his superiors have nothing to do with the case of the petitioner. With regard to the incident at Hadaf Dam there was large scale of cutting of mahuda trees and illicit removal of the material by the farmers in Patangadi and Navagam villages falling in the jurisdiction of the petitioner and he failed to take any concrete action in the matter as a result of which he was placed under suspension and the departmental inquiry was conducted. The Inquiry Officer exonerated the petitioner from the charges levelled against him. But the Disciplinary Authority i.e. the Conservator of Forest was not in agreement with the findings recorded by the Inquiry Officer and punishment of reducing the petitioner to pay minimum scale of Rs. 330/-/- p.m. for one year was awarded without any future effect and that punishment was accepted by the petitioner. It was denied that the petitioner was being harassed as alleged and the petitioner was not allowed to cross Efficiency Bar because he was not found upto the mark. However, the matter was being reconsidered and the decision was to be taken. Learned A.G.P. pointed out from the record that the petitioner was allowed to cross Efficiency Bar on 22-11-1988 though he was retired prematurely on 17-11-1987. The petitioner retired prematurely under the provisions of Rule 161 (1) (a) (i) of the Bombay Civil Service Rules, 1971 by giving him three months notice and he was also given an opportunity to continue in service on a reverted post of Beat Guard, which he did not accept.

6. Rejoinder affidavit has also been filed. Learned counsel for the petitioner submitted that the impugned order retiring the petitioner prematurely is malafide, illegal, arbitrary and against the statutory provisions of law. He further submitted that the petitioner was transferred on 30-6-1987 from Limkheda Range to Baria Range Office. But he was not allowed to join his duties by the Range Forest Officer and the Deputy Forest Officer as one Mr. Parghi was reverted to the lower post and hence the petitioner was transferred to that post and he was to join the post of said Mr. Parghi. But Mr. Parghi had obtained stay order from the Court and that is why the petitioner could not be allowed to resume his duty on the post of Mr. Parghi and the department did not think it proper to allow the petitioner to join on the said post on which Mr. Parghi was continue to work

on the said post. The petitioner was forced and compelled to proceed on leave and to submit his leave reports otherwise he was given threat to face departmental proceedings. Accordingly, the petitioner had to submit his leave reports time to time. The petitioner again and again tried to resume his duty on the said post. But the department failed to get the stay order vacated and hence the department could not accommodate the petitioner on the said post and the petitioner was directed to join on the reverted post. The petitioner has not accepted the reverted post and hence the order of premature retirement has been passed against him which is malafide, illegal, arbitrary and erroneous and contrary to the provisions of law.

7. Second contention of the learned counsel for the petitioner is that there is no provision of law that if any person transferred to somewhere else if he cannot be accommodated or permitted to join on that post then he should be allowed to join on the lower post. The reversion of the petitioner to the lower post is against the provisions of law and the principles of natural justice. The petitioner cannot be reverted to a lower post without passing any order of reversion without holding departmental inquiry of the disciplinary authority or he is not found physically fit for the post, the lower post cannot be offered to him. In the present case, the petitioner was already working as Forester. There is nothing on record to show that he was physically incapable of working as a Forester or any order has been passed against him in accordance with law in departmental inquiry reversion to the lower post. As such, the order of reversion of the petitioner to a lower post is against the statutory provision of law.

8. On the other hand, learned A.G.P. contended that the service record of the petitioner was considered by the Reviewing Committee and it was found by the Reviewing Authority that the petitioner was not fit to continue his service in future and hence the order was passed and there is nothing on record in connection with the reversion or any other incident. The order has been passed on the basis of the report of the Review Committee. Therefore, the order is fully justified and does not suffer from any illegality, irregularity or any infirmity.

9. I have carefully considered the submissions made on behalf of the learned counsel for the parties and perused the material on record.

10. It is not disputed fact that the petitioner was initially appointed as Beat Guard in 1955 and was promoted in the year 1972 to the post of Forester and was working as a Forester on 30-6-87 and he was transferred to Baria Range Office where the petitioner had to join his duties in place of Mr. Parghi who was reverted to the lower post. Mr. Parghi succeeded in getting the stay order from the Court and as result of which the services of Mr. Parghi on the post of Forester was allowed to be continued and consequently the petitioner could not be permitted to join his duty on that post as there was no vacant post of Forester at that place.

11. From the facts and circumstances of this case, it appears that the petitioner was not allowed to join his duty on the post of Mr. Parghi as a Forester and he was assured that stay order of the Court will be got vacated and the petitioner will be allowed to join the said post. But the department could not succeed in getting the stay order vacated and hence the petitioner was asked to remain on leave. Further, when the department could not accommodate the petitioner on the same post on which Mr. Parghi was working, the department offered to the petitioner to join on the reverted post as a Beat Guard. But for that the petitioner was not agreed and refused to accept the same. The petitioner made several representations. In the last when the petitioner had not accepted the offer made by the department to join his duty on the reverted post of Beat Guard, the order of premature retirement was prepared and offer was also made him to join on the reverted post of Beat Guard in the said order. These facts clearly indicates that the petitioner was compelled to remain on leave or to join to the reverted post of Beat Guard and no attempt has been made by the department to allow the petitioner to join his duty on the post of Forester either at Baria Range or any other place. Thereafter, some report was prepared by the Review Committee. There was no option for the department except to retire the petitioner prematurely or to accommodate him on lower post of Beat Guard. Learned A.G.P. states that the Review Committee Report does not contain any material except a sentence that 9 years service record of the petitioner was considered and this report does not contain any date on which the report was prepared which clearly indicates that the report of Review Committee was prepared subsequently with oblique motive to retire the petitioner prematurely.

12. I have occassions to see various reports of Review Committee in various cases wherein I found complete details of confidential reports year wise and

consideration thereof analytically. But in the present case, the Review Committee Report shows only one sentence that 9 years service was considered and the petitioner was not found fit to continue in his service as a Forester. Moreover this report of review Committee is undated. From the facts and circumstances of this case, it is clearly evident that premature retirement of the petitioner on the basis of the report of the Review Committee which contains no details of consideration is nothing but malafide, illegal, erroneous, unjust and not sustainable in the eye of law which appears to be passed with oblique motive so that the petitioner cannot claim post of Forester on which he was working.

13. So far as the reversion of the post to the post of Beat Guard is concerned, it is true that the Government is fully empowered to offer its employee to join on the lower post. Now, question arises as to under what circumstances the Government is authorized to do so. On departmental/domestic inquiry, the Government can award punishment of reversion or when an employee is found to be unfit physically on medical test to work on his post and on a lower post which does not require standard or strict medical requirement the employee can be offered or on request of the petitioner to join lower post. But learned A.G.P. could not point out any statutory provisions of law under which the petitioner could have been reverted to the post of Beat Guard. If the petitioner could not join his duty on the post of Forester, then he should not have been directed to join on the reverted post of Beat Guard and there is no circumstance on the fact of the record that under what circumstances the department was compelled to pass the order of offer to join on a lower post and allowed the petitioner to join the reverted post of Beat Guard except the departmental could not permit the petitioner to join on the post on transfer due to the stay order of the Court in connection of Mr. Parghi. Under these circumstances, the order of premature retirement with a option given to the petitioner to continue in service on the reverted post of Beat Guard is illegal, arbitrary, unjust and against the provisions of law and hence the same is not sustainable in the eye of law.

14. Accordingly, this petition is allowed and the impugned order dated 17-11-1987 of compulsory retirement is hereby quashed and set aside. The respondents are directed to treat the petitioner in service from the date when the order of premature retirement was passed till date 25-11-1990 of his superannuation. The respondents are further directed to calculate arrears of salary of

the petitioner from 17-11-1987 to 25-11-1990 and pay the same with interest at the rate of 12% p.a. within three months from the date of presentation of a certified copy of this judgment or from the date of receipt of writ this Court whichever is earlier. Rule is made absolute to the aforesaid extent, with no order as to costs.

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/JVSatwara/